

Nov. 1, 1979

STATEMENT OF
MARK G. ARON,
DEPUTY GENERAL COUNSEL,
UNITED STATES DEPARTMENT OF TRANSPORTATION,
BEFORE THE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION,
UNITED STATES SENATE,
MEETING IN FALLON, NEVADA,
NOVEMBER 1, 1979,
REGARDING MOTOR CARRIER REGULATORY REFORM AND
TRUCKING SERVICE TO SMALL COMMUNITIES

Mr. Chairman and Members of the Committee:

Good morning. My name is Mark Aron and I am the Deputy General Counsel of the U.S. Department of Transportation. It is a privilege to appear before you today on behalf of the Secretary of Transportation, Neil Goldschmidt.

I might say that I am here today primarily to listen to the other witnesses and to the suggestions they may have. As you know, before the Administration recommended legislation to the Congress, we engaged in a long consultative process. We talked with truckers, shippers, members of the financial community, public interest groups, and local government groups so that we could learn first hand of the workings of the regulatory system. We think we learned a lot from that process and we have continued to listen. The various field hearings conducted by this Committee and by the House Committee on Public Works and Transportation have provided us with excellent opportunities to learn even more.

However, while I am here today primarily to listen, I thought

I could spend a few minutes to discuss the subject of truck service to small communities and some of the early results of the Nevada portion of the study of small community truck service that this Committee requested the Department to conduct. Before doing that, let me briefly set the stage by presenting our view of the basic issues.

Last month Secretary Goldschmidt appeared before this Committee in Washington and made three major points regarding the trucking legislation that is before the Congress. He stated that the Administration's trucking bill would help conserve energy, fight inflation, and improve service to small communities.

Mr. Chairman, many features of the truck transportation system run counter to our national energy conservation and anti-inflation goals. We believe that the current regulatory system -- by limiting entry and by exempting carriers from antitrust laws -- limits competition and leads to rates that are higher than they would otherwise be. In many areas, the current system also severely limits what products trucks may carry or the routes they may take, and in this way the system needlessly puts empty trucks on the road and extra miles on the trucks, whether they are full or empty.

Reducing energy waste and fighting inflation are vitally important goals, and all of us in the Administration look forward to working with you and the other Members of the Committee in the national effort to meet these goals.

Let me turn now to the issue of small community truck service.

Mr. Chairman, as we have said, we believe that the state of small community service is another reason for proposing change, not a reason for resisting it. We have assembled substantial evidence that the present system does not work to assure service to small communities. Many of the current regulatory practices, such as route and commodity restrictions, may actually impair small town service. For example, the certificates which authorize a carrier to provide service between certain markets often prohibit the carrier from stopping at so-called intermediate points, and serving those usually smaller communities. Agricultural exempt carriers, who are often based in rural areas, cannot haul needed regulated goods on their backhauls to the rural areas where they pick up their next load except in limited circumstances. Both of these practices limit the availability of service to small towns.

It is sometimes asserted that a different aspect of the current regulatory system protects small community service by providing a cross-subsidy between big town and small town service and by forcing carriers to provide small town service which is said to be unprofitable. First, we have found no evidence that service to small towns is inherently unprofitable. Second, we have found little evidence that the Interstate Commerce Commission bars carriers from exiting or abandoning small towns where the service becomes unprofitable. On the contrary, we have found substantial evidence that carriers not infrequently abandon small community service without notifying the Interstate Commerce Commission, which simply does not have the

resources to monitor service levels or examine whether carriers are meeting their obligation to provide service. As far as we can determine, when a carrier wants to stop service to a small community, or substantially reduce it, it merely stops or reduces the service.

A study recently completed for the Department, the Breen/Allen study, provides extensive evidence that ICC regulated carriers have great discretion to reduce, and even drop, service to small towns. That study examined the nature of the common carrier obligation and the extent to which it insures that small communities receive service from ICC regulated carriers.

Let me emphasize, Mr. Chairman, that this was the only purpose of the Breen/Allen study. It was not intended to give a complete picture of small town service.

Professors Breen and Allen looked at the ICC regulated carriers authorized to serve small towns in Washington, Oregon, Idaho, Montana, and Utah, towns that I'm sure have trucking needs similar to those of many Nevada towns. One part of the study looked at eight communities. It was found that only 35 percent of the ICC regulated carriers authorized to provide service to those communities did in fact provide any service. Three of eight towns received no service at all from these carriers, who were authorized, and thereby obligated, to provide service. The results of study indicate that ICC regulated carriers not infrequently abandon service to an authorized point without going through ICC procedures.

In other words, Mr. Chairman, we think the evidence shows that

most service provided to small towns by ICC regulated carriers is provided because it is profitable for the carrier to do so, not because of any obligation imposed by the present Federal regulatory system.

At this point let me emphasize that the bill submitted by the Administration would not change in any way the law which establishes the "common-carrier obligation" or the present abandonment standard. When we discussed these areas with the trucking community, they indicated "these were not problems" because the present law provided sufficient flexibility.

Also, some fear that even if small community service is not abandoned, that rates will rise. Again let me emphasize that the bill we have proposed would not remove ICC ratemaking authority except in a narrow range. For the first two years, carriers could raise rates by only 5% without going to the ICC and, in later years, could raise them by only 7% without ICC approval. The heart of the bill is to remove many of the restrictions which today impair small community service. The agricultural exemption would be broadened to allow more backhauling of regulated goods; carriers would be allowed to stop at intermediate points; and a more liberal entry policy would apply for small package service and where present service is poor. We are confident that these changes will improve small town service.

Nevertheless, when Secretary Goldschmidt testified before this Committee on October 2, the Members of the Committee were concerned that existing studies did not attempt to measure the extent to which persons in small towns are satisfied with present trucking service.

In response to this concern, the Secretary agreed to study service to two small towns in each of the States of Nevada, New Mexico and Kentucky, and to determine the degree of citizen satisfaction with present trucking service in these towns.

What I am presenting today are interim results of our study of two small Nevada towns, McGill, in White Pine County, and Pioche, in Lincoln County.

Last week the Department sent two professional employees, one economist and one lawyer, to visit for one day in each of these two towns. On arrival, our representatives scanned the local telephone book for all business listings and proceeded to visit businesses and conduct as many interviews as possible.

Mr. Chairman, we do not suggest that the results of this effort are comprehensive, or represent a thoroughly scientific approach. But we worked closely with the Committee staff in developing the questionnaire used and, like you Mr. Chairman, we think it is important to hear first hand from businesspeople in towns like McGill and Pioche. I think that the words of these people, coupled with the impressions gathered by our staff, constitute the kind of birds-eye view of small community service that the Committee may be seeking.

Let me start by describing the two towns we studied as best I can.

Both are small. McGill has a population of about 2,000 and Pioche has about 700. Both towns are located near a decent highway, U.S. 93. Both towns rely heavily on trucking service, though both

have rail service to their major plants. In addition to having mining related industries, each town has a normal mix of businesses, including at least one grocery store, hardware store, gas station, cafe, and bar. We also learned that residents of each town are concerned about future plans for the MX missile and expect that ultimate deployment would stimulate growth.

The towns differed in several ways. Pioche seems more isolated than McGill. McGill is only about 10 miles from Ely, a town of about 4,000, and many of the citizens and businesses in McGill seem oriented toward Ely, such that it would not be unfair to consider McGill as part of a single economic unit with Ely. By contrast, residents of Pioche are much more concerned about the availability of goods and services in Pioche itself. Also, McGill has one truly dominant employer, Kennecott, whose fortunes greatly affect the fate of all other businesses in the town. When the Kennecott smelter was closed recently for over one year, several businesses closed, including two grocery stores, a lumber store, and a dry goods store. Pioche has been more stable, though it too is affected by the ups and downs of the mining business. McGill has a ranching community. Our representatives did not find ranching in the immediate vicinity of Pioche.

At this time let me summarize tentative findings from our visits with the businessmen and businesswomen of these towns.

People are generally satisfied with present trucking service to their towns, but they are satisfied primarily because of the

availability of service from a great variety of sources and because they expect slow and infrequent service to their community. There is a very significant amount of private carriage in proportion to total truck transportation. People in these towns are enterprising and so are their shippers. They frequently haul their own goods in order to insure satisfactory service that is not perceived as readily available from carriers. So, "the truck stops" in Pioche and McGill, but it is often an unregulated truck.

There is heavy reliance on United Parcel Service and, in McGill, on the Wycoff Co., a regional small package delivery company, for shipment of small packages. Service by other ICC regulated LTL carriers is considered too infrequent to meet service needs. Thus, UPS and Wycoff service is generally considered to be of crucial importance, and shippers indicated that they would use UPS and Wycoff to an even greater degree if their weight limits were raised, something that our bill would do. We also found particularly heavy reliance on non-ICC regulated trucking in the agricultural sector of the economy.

It appears that not all authorized carriers provide service to these towns. We have tentatively identified several carriers who have these two towns on their certificates, but who were not mentioned in interviews as being among the carriers providing service to these towns. This would seem to confirm our view that regulated carriers exercise a great deal of discretion in choosing to serve or not serve a point.

As to ICC regulated LTL carriers, their rates were perceived as too high, though most respondents thought the price of everything was too high nowadays. There were a few complaints about damaged shipments, though there were more frequent complaints about slow service.

Now let's look at some of the particular businesses we visited and the particular things we learned from these visits.

The local cafe in McGill relies entirely on private trucking. Its groceries are supplied by a food warehouse in Ely, which brings the goods to McGill in its own truck.

One dry goods store in McGill is switching more and more of its business to UPS. The store continues to use an ICC regulated LTL carrier, IML Freight, Inc. (IML), for larger shipments, but feels that UPS is cheaper and faster for smaller shipments. The store would give more business to UPS if its weight limit were raised. The store manager had no complaints about service from either UPS or IML. She feels that rates for truck service are high, but that rates for everything are high.

The two ranchers interviewed have had some service problems. The smaller rancher has less contact with regulated carriers. He receives a shipment from UPS about once per week and from IML about once per year. The IML shipments are of heavier goods, such as furniture and pipe, and this rancher mentioned that IML would not deliver to the ranch, so he has to drive this truck to Ely to pick up the goods. The rancher thought IML would not deliver to his

door because his ranch is off the highway and that IML did not have authority to drop off goods at his ranch. We have not looked at IML's precise authority, but I note that under our bill, people like this rancher could make arrangements for direct delivery on the basis of business considerations alone, without interference from regulatory requirements.

The larger rancher frequently uses his own trucks to get his supplies. He would rather get out of private trucking, but feels he'll have to do even more of his own hauling due to service and rate problems. He owns a 24,000 pound truck and hauls feed in from Reno and Salt Lake City, which are round trips of approximately 750 and 500 miles, respectively. The rancher uses both UPS and IML and would use UPS more if its weight limit were raised. For emergency shipments, this rancher occasionally has packages shipped by air freight to the airport between McGill and Ely, and picks them up with a pick-up truck.

The grocery store in McGill gets "about 95 percent" of its shipments from private carriers, primarily two wholesalers operating out of Salt Lake City. The rest of the shipments come via IML or UPS. The store uses UPS 2 or 3 times per month and would increase usage if UPS had a higher weight limit.

The grocer also noted that many trucks pass through the town, but that few of them stop. Our representatives, while in McGill and Pioche, and while traveling between, also noted many trucks going up and down route 93 that belonged to carriers that do not serve those two towns. So, on the basis of casual impressions,

it appears that the provision in the Administration bill that would allow all carriers to make intermediate and off route stops could increase service to these and other towns in eastern Nevada.

The only gas station in McGill relies almost exclusively on private carriage for supplies. The owner gets his gas from the trucks of a major oil company and most of his other supplies from auto parts dealers in Elko, Twin Falls, Idaho, and Reno. In each case, the parts supplier drives its own trucks to McGill and the owner of the gas station buys from supplies available on the truck. These trucks deliver to McGill about once per month. For odd items between shipments, the station owner drives to Ely. The station uses UPS and Wycoff for about five percent of its business and is planning to expand its use of Wycoff to meet a key business need. The owner has frequently had to turn down repair work for lack of major parts which he cannot afford to stock. This repair business has been referred to garages in Ely. The owner has now entered into agreements with large automotive dealers in Salt Lake City who will ship parts on request via Wycoff, with supplies arriving in McGill the next day. The owner hopes the availability of this service will enable him to keep repair business in McGill.

The owner of a sporting goods and general store shared the gas station owner's concern over the need for rapid service. She noted that there's not much opportunity to stock a large selection of goods in White Pine County and that McGill was an "ordering town", at least as regards guns and ammunition. The owner uses Wycoff

for shipments where possible because it provides the fastest service. Without the promise of rapid delivery, customers will not place orders.

The needs of the Kennecott smelter in McGill are clearly different from those of the other businesses in town. The plant receives its ore and ships out its smelted product by rail. It uses truck service for parts to keep the smelter going. There is more heavy hauling and thus greater usage of IML and occasional use of contract carriers. The plant receives packages from UPS and Wycoff daily. The plant's purchasing agent mentioned that some packages went via Wycoff rather than UPS because Wycoff has a higher weight limit than UPS. The officer also thought that when UPS began service in McGill about five years ago "it was a big shot in the arm for the area", and he would like to see a higher weight limit for UPS.

Like the grocery store in McGill, the two grocery stores in Pioche depend heavily on private and exempt carriage. One of the grocers in Pioche went on to explain the importance of private carriage to his business. Most of the store's shipments come in the trucks of a grocery cooperative in Salt Lake City to which the store belongs. The grocer referred to that cooperative as the "salvation" of his business and said that he couldn't operate under his present price structure unless he belonged to the cooperative. The grocer was asked what the consequences could be if he were to switch to receiving shipments from an ICC regulated carrier. Since there is no other town for miles, we asked the grocer how could he possibly lose business,

even if he had to raise prices. He stated that if he had to ship via an ICC regulated carrier, some customers to the north of town might actually drive to the Safeway in Ely, 110 miles from Pioche, to stock up on groceries. He perceived IML rates as much higher than the rates charged by his cooperative. The store does receive some IML service and receives some dairy products and produce from other private and exempt haulers. UPS shipments, primarily of hardware and mechanical parts, came 2-3 times per month.

The other grocer in Pioche belonged to the same cooperative and also got a large percentage of shipments from that source.

We also found that private hauling is heavily utilized by the two hardware and general merchandise stores in Pioche. Both of these stores regularly drive their trucks to Las Vegas to pick up supplies rather than receive shipments. This is a nearly 400 mile trip and at least one of the stores makes the trip weekly. Both store owners feel that IML rates are too high, and that's why they began hauling their own shipments. Both stores receive shipments via UPS 2-3 times per week and are satisfied with that service. One mentioned that the initiation of UPS service to town five years ago was an important innovation.

Both of the bars visited in Pioche also relied heavily on private carriage over long distances. One of the establishments received 100 percent of its beverages from Las Vegas distributors who drove the goods all the way to Pioche from Las Vegas on their own trucks.

So, Mr. Chairman, without describing in further detail all

of the businesses we visited or our methodology, let me briefly review what we think we learned from these interviews.

These towns get truck service that is perceived as satisfactory. It is perceived as satisfactory in large part because enterprising individuals make very heavy use of private trucks and because the towns do not expect extremely regular service from for-hire carriers other than UPS or Wycoff. The citizens realize they are somewhat out of the way and that trucking companies might not be eager to come to them. UPS and Wycoff service is tremendously popular and there was great interest in an increased weight limit for UPS. IML served both towns and its service is generally considered at least satisfactory, and in many cases good. There is some concern about IML rates and speed of delivery, however. There is virtually no awareness of other ICC regulated carriers being authorized to provide service, though we have tentatively identified several other carriers as being authorized to serve these towns.

Lastly, though we do not claim that this was a totally scientific survey, our representatives did visit over half of the businesses in each town and we are confident that a representative cross section of each town's businesses were interviewed.

We think the results are consistent with our earlier statements before the Committee -- expanded weight limits for small package specialists and intermediate stop authority would help small town service, just as private and exempt carriage already help. While ICC regulated LTL carriers play a role in providing small town service,

particularly as to heavier packages, this role is not dominant and there is no reason to believe the service would not be provided under a reformed regulatory environment.

Thank you Mr. Chairman for the opportunity to appear before you today and present these interim results. We are still processing our interview results and hope to have final results available for the Committee, along with final New Mexico and Kentucky results, by December 1. At this time I would be pleased to answer any questions that the Committee may have.